

#### **§ 1308.14**

adequacy of the Contractor's supporting data, contractual requirements for auditing of Contractor's cost or other data, and other relevant factors.

#### **§ 1308.14 Request for relief by TVA.**

When TVA believes it is due relief under a contract, the Contracting Officer shall make a request for relief against the Contractor, and shall attempt to resolve the request by agreement. If agreement cannot be reached within a reasonable time, the Contracting Officer shall issue a decision which complies with the requirements of § 1308.12(b).

#### **§ 1308.15 Finality of decisions.**

A decision by a Contracting Officer under the disputes clause of a contract subject to this part is final and conclusive and not subject to review by any forum, tribunal, or Government agency unless an appeal or suit is timely commenced under this part or section 10(a)(2) and (3) of the Act.

#### **§ 1308.16 Decisions involving fraudulent claims.**

If a Contracting Officer denies any part of a Contractor's claim for lack of support, and the Contracting Officer is of the opinion that the Contractor's inability to support that part of the claim is within § 1308.6 and section 5 of the Act, the Contracting Officer's decision shall not state that opinion, but, contemporaneously with the decision, the Contracting Officer shall separately notify TVA's General Counsel of that opinion and the reasons therefor.

#### **§ 1308.17 Failure to render timely decision.**

Any failure by Contracting Officer to issue a decision on a submitted claim within the period required or permitted by § 1308.13, will be deemed to be a decision by the Contracting Officer denying the claim and will authorize the commencement of an appeal on the claim under this part, or a suit on the claim as provided in section 10(a)(2) of the Act. If no appeal or suit pursuant to this section has been commenced at the time the Contracting Officer issues a decision, the right to sue or appeal and the time limits therefor shall be determined as otherwise provided in

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this part and the Act, and this section shall not authorize an appeal or suit from the decision.

### **Subpart C—Board of Contract Appeals**

#### **§ 1308.21 Jurisdiction and organization.**

(a) The Board shall consider and determine timely appeals filed by Contractors from decisions of TVA Contracting Officers pursuant to a disputes clause.

(b) The Board shall consist of an indeterminate number of members, who shall serve on a part-time basis. The members of the Board shall all be attorneys at law duly licensed by any state, commonwealth, territory, or the District of Columbia. One of the members of the Board shall be designated as "Chairman" pursuant to section 8(b)(2) of the Act.

(c) Each appeal or other matter before the Board shall normally be assigned to a single Hearing Officer, to be designated by the Chairman. The Chairman may act as a Hearing Officer, and shall notify the Contractor and TVA of the name and mailing address of the person designated as Hearing Officer.

(d) If a member to whom an appeal has been assigned cannot perform in a timely manner the duties of Hearing Officer, because of unavailability or incapacity which would in the Chairman's judgment affect the expeditious and timely resolution of the appeal, or for any other reason deemed sufficient by the Chairman, the Chairman may take any action deemed appropriate to effectuate the disposition of the appeal and the rights of the parties under this part. The kind of action taken, and the manner thereof, shall be within the discretion of the Chairman, and may include, but is not limited to, action on pending motions, discovery, issuance of or ruling on objections to subpoenas, and reassignment of an appeal in whole or in part.

#### **§ 1308.22 Representation.**

(a) In any appeal to the Board, a Contractor may be represented by an attorney at law duly licensed by any state, commonwealth, territory, or the

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District of Columbia. A Contractor not an individual and not wishing to appear by an attorney may be represented by any member, partner, or officer duly authorized to act on Contractor's behalf, or if an individual, may appear personally.

(b) TVA shall be represented by attorneys from its Office of General Counsel.

### § 1308.23 Finality of decisions.

A decision by a Hearing Officer on an appeal shall be the decision of the Board and shall be final, subject only to amendment under §1308.37(c), reconsideration under §1308.38 or appeal pursuant to sections 8(g)(2) and 10(b) of the Act.

### § 1308.24 Undue delay in Contracting Officer's decision.

(a) If there is an undue delay by a Contracting Officer in issuing a decision on a claim, the Contractor may request the Chairman to direct the Contracting Officer to issue a decision within a specified period of time.

(b) A request under this section shall:

(1) Be in writing;

(2) State the date on which the claim was submitted to the Contracting Officer.

(3) State the date suggested for issuance of a decision by the Contracting Officer.

(c) TVA may reply to a motion under this section within 5 days after its receipt.

(d) The Chairman shall issue a written decision on the request. If granted, the decision shall specify the date by which the Contracting Officer's decision is to be rendered, and a copy shall be served on the Contracting Officer.

### § 1308.25 Stay of appeal for Contracting Officer's decision.

If an appeal has been taken because of a Contracting Officer's failure to render a timely decision, as provided by §1308.17, the Hearing Officer, with or without a motion by a party, may stay proceedings on the appeal in order to obtain a decision on the matter appealed. Oral argument will not be heard on such a motion unless otherwise directed. The stay order will normally set a date certain by which the

decision of the Contracting Officer will be rendered. Such date shall take into account the factors mentioned in §1308.13(c), the length of time the matter has already been pending before the Contracting Officer, and the need for prompt and expeditious action on appeals.

### § 1308.26 Appeals.

(a) An appeal to the Board from a Contracting Officer's decision under §1308.12 shall be initiated within 90 days from the Contractor's receipt of the Contracting Officer's decision and in the manner set forth in the disputes clause.

(b) An appeal from the Contracting Officer's failure to render a timely decision shall be taken within the time period provided by §1308.17. The notice of appeal shall be in the form and filed in the manner specified in the disputes clause, but shall state that it is an appeal under §1308.17, and shall include a copy of the claim which was submitted for decision.

### § 1308.27 Appeal files.

(a) Notices of appeal shall be filed as provided in the disputes clause, and shall be promptly transmitted by TVA to the Chairman.

(b) Following transmittal of the notice of appeal, TVA shall assemble and transmit to the Hearing Officer and the Contractor an appeal file consisting of:

(1) The Contracting Officer's decision, if any, from which the appeal is taken;

(2) The contract and pertinent amendments, specifications, plans, and drawings (a list of the documents submitted may be provided Contractor in lieu of copies);

(3) The claim;

(4) Any other matter pertinent to the appeal submitted to or considered by the Contracting Officer for reaching a decision.

(c) The appeal file shall be submitted within 30 days. Within 30 days after receipt of a copy, the Contractor may submit to the Hearing Officer and TVA's General Counsel any documents within the scope of paragraph (b) of this section which are not included in the appeal file but which the Contractor believes are pertinent to the